

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 DAN BECK,

5 Appellant,

6 VS.

OSPI 203-92

7 DAWSON COUNTY (MONTANA)
8 HIGH SCHOOL DISTRICT, by and
through its Board of Trustees,

9 Respondents.

DECISION AND ORDER

10 * * * * *

11 STATEMENT OF THE CASE

12 On January 27, 1992, Dan Beck (Beck) was advised of the
13 district superintendent's recommendation for termination and his
14 right to a hearing before the Dawson County High School District
15 Board of Trustees, as well as his right to waive that hearing.
16 Beck waived his right to a hearing before the Board. The Board
17 subsequently took action on February 6, 1992 to terminate his
18 employment with the district.

19 Beck then filed a timely appeal of the Trustees' decision
20 with the Dawson County Superintendent of Schools pursuant to §
21 20-4-204, MCA. On March 16, Superintendent Grow denied the
22 appeal stating that "Petitioner does not have a contested case
23 and this County Superintendent has no jurisdiction." Upon a
24 motion to reconsider, the County Superintendent issued an order
25 April 2 denying the motion.

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DECISION AND ORDER

The State Superintendent of Public Instruction has jurisdiction over this matter pursuant to § 20-3-107, MCA. The decision of the County Superintendent is effected by error of law. This matter is remanded for a factfinding hearing on whether the Trustees appropriately terminated Beck.

DISCUSSION

The issue before this Superintendent is whether Beck's waiver of his right to a hearing before the Board of Trustees was also a waiver of his statutory right to appeal the decision of the Board to the County Superintendent.

Section 20-4-204, MCA, provides that a tenured teacher may waive the right to a hearing before the Board of Trustees. Beck, in his February 4 letter to the Glendive High School Trustees, specifically stated that he was waiving his right to a hearing at the trustee level. He also specifically expressed his intent to appeal a negative trustee decision to the county superintendent.

The language of § 20-4-204, MCA, is plain and unambiguous.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

- (i) a district superintendent;
- (ii) in a district without a district superintendent, a principal;
- (iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

1 (2) Whenever the trustees of a district receive a
2 recommendation for termination, the trustees shall, before May 1
3 of the current school fiscal year, notify the teacher of the
4 recommendation for termination and of the teacher's right to a
5 hearing on the recommendation. The notification must be delivered
6 by certified letter or by personal notification for which a
7 signed receipt is returned. The notification must include:

8 (a) the statement of the reason or reasons that led to the
9 recommendation for termination; and

10 (b) a printed copy of this section for the teacher's
11 information.

12 (3) The teacher may, in writing, waive the right to a
13 hearing. Unless the teacher waives the right to a hearing, the
14 trustees shall set a hearing date, giving consideration to the
15 convenience of the teacher, not less than 10 days or more than 20
16 days from receipt of the notice of recommendation for
17 termination.

18 (4) The trustees shall:

19 (a) conduct the hearing on the recommendation at a
20 regularly scheduled or special meeting of the board of trustees
21 and in accordance with 2-3-203; and

22 (b) resolve at the conclusion of the hearing to terminate
23 the teacher or to reject the recommendation for termination.

24 (5) The tenure teacher may appeal a decision to terminate
25 to the county superintendent who may appoint a qualified attorney
at law as legal adviser who shall assist the superintendent in
preparing findings of fact and conclusions of law.

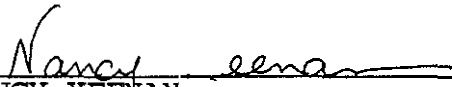
(6) Subsequently, either the teacher or the trustees may
appeal to the superintendent of public instruction under the
provision for the appeal of controversies in this title.

While it is clear that Beck relinquished his right to a
hearing before the board of trustees, it is equally clear that he
made no similar relinquishment of his right to appeal the
decision of the trustees as provided in subsection (5). In fact,
he specifically stated his intent to exercise that right when he
was in a position to do so, i.e., upon the final decision by the
board of trustees to terminate his employment.

The right to a factfinding hearing of record before the
county superintendent provided for in § 20-4-204(5), MCA, arises

1 upon the final decision of the trustees. The right to a hearing
2 before the county Superintendent is not tied to the right to a
3 hearing before the board. The trustees made their final decision
4 February 6, 1992. At that time a controversy (contested case)
5 existed and invoked the jurisdiction of the county
6 superintendent.

7 DATED this 19 day of October, 1992.

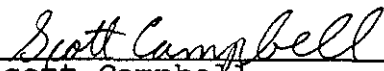
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10 NANCY XEEHAN

11 **CERTIFICATE OF SERVICE**

12 THIS IS TO CERTIFY that on this 20th day of October, 1992,
a true and exact copy of the foregoing Decision and Order was
nailed, postage prepaid, to the following:

14 Donna X. Davis
15 MATOVICH, ADDY & XELLER, P.C.
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